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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED
LEGAL NEWS NOTES AND FACETIÆ

VOL. 5 JULY, 1898. No. 2

CASE AND COMMENT

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Unexpected History.

"A divinity that shapes our ends" makes history that men have not planned. The most certain results of our present war now seem likely to be those which no man had anticipated. The "more perfect union" which our forefathers planned in making our Constitution seems to be coming a century after as an unlooked-for reward of a chivalrous enterprise. The Anglo-American friendship that has long been obscured by clamor of the foolish and passionate has suddenly become a fact too evident for the world to doubt; but no one seems to have dreamed that this would be a result of the war with Spain. Dewey's victory at Manila instantly changed our international situation and precipitated new problems. It now bids fair to prove the initial event of a new epoch in our national life.

Jewish Courage.

The conclusion that Jews are cowards is drawn by Prof. Cesare Lombroso from the fact that they furnish few suicides and few soldiers for the armies of Europe. The worthlessness of such an argument is apparent on its face. It assumes that cowardice is the only restraint upon self-destruction, and ignores the restraining influence of ethical and religious ideas. Self destruction is in fact often induced, rather than prevented, by cowardice. Many a man takes his own life because he is afraid to face his fellowmen. It is even reported that men have been driven to suicide by terror of death.

The failure of Jews to enlist in the armies of Europe is no better proof of cowardice than their failure to commit suicide. Shameful indignities from almost every European nation have given the Jews too much cause for hatred in lieu of love, and made patriotism well nigh impossible. The enlistment of Jews in our present war against Spain is something for them and for the nation to be proud of. It shows they can have patriotism when they have a country.

Anglo-Phobia.

The spectacular performance of "twisting the British lion's tail," which a certain type of political fanatics have held to be a patriotic rite almost as sacred as that of "waving the bloody shirt," has lost its popularity. The mass of the people have long understood that our Revolutionary War was over, and likewise the war of 1812, but those of our congressional and journalistic politicians who think human conduct is dominated only by selfishness, passion, and jealousy have continued to play upon the supposed hostility of the American people to England, apparently ignorant of their strong, though undemonstrative, friendship for the mother country. But the dullest man can no longer fail to see it. Many of the Anglo-phobes themselves have had a change of heart. Those who have not are prudent enough to keep silent.

Anglo-Saxon Civilization.

The English-speaking race drawing together into a conscious unity of friendship is significant of world-wide results. Leading the world in civilization, it is powerful enough when united to be the dominating force among men. The growth of its civilization is by far the noblest chapter in the history of the world. Great Britain and America, as independent sister nations pushing on in sharp rivalry, yet in a fair and friendly spirit, should continue to lead the progress of mankind. The chief secret of Anglo-Saxon civilization is to be found in its universality. The ruling classes in many nations, ancient and modern, have had a high degree of civilization and culture, while the great mass of the common people have remained proletarian. Among the Anglo-Saxon peoples there has been a greater measure of equality and a greater development of individuality. In America our constitutional guaranties of equality have not been meaningless, but their operation has made the progress of this nation the marvel of the world. On the other hand, the lack of still more perfect equality is the parent of our most perplexing and dangerous problems. The ignorant masses who have been becoming increasingly envious and discontented constitute the only menace to our continued prosperity. To give them more enlightenment, and to raise them to a higher level of life, is necessary if our nation is to reach the summit of its superb possibilities. The glory and the greatness of Anglo-Saxon civilization is in the brains and character of the common people. Increase the average of individual manhood and we increase the nation's power. To-day all the world can see that our superiority to Spain is less in the number than in the quality of our men. The contrast teaches a lesson that we cannot learn too well. It inspires hope that America shall make still greater progress toward the ideal civilization in which there shall be no substratum of ignorance and degradation, but a "proud free people" among whom every man is a citizen and every citizen fit for self government.

American Snobs.

There are some among us of the snobbish sort, whose nature inclines them to worship and to imitate the superficial civilization of an aristocracy. They would educate the few and keep the many as a proletariat for hewers of wood and drawers of water. They have no faith in humanity—no faith in God. Independent, sinewy, American manhood, free from superciliousness, on the one hand, and free from subserviency, on the other, is, in their view, vulgar. Such men are, doubtless, honest enough in their views. The fact is they are substantially aliens in their own land and alien to its spirit. Their ideas of American character seem to be borrowed from our own "yellow" journals or from Europe. They cannot see the innumerable quiet philanthropies, the widely diffused ideals of usefulness, the unobtrusive heroism of self-denial, that American life everywhere presents to those who have eyes to see, and that are just now exhibited in superb military and naval service. A citizen of this country who can say of his countrymen, as a certain college professor was recently reported to have said, that they have "no ability to distinguish between what is honest and what is dishonest," and that it is their characteristic to be "trifling," thereby reveals his own isolation from the moral and spiritual forces of the nation and his pitiful ignorance of their existence. His shallow misjudgment of the character of his own people makes a damning epitaph for himself.

The Sapient Editor.

A periodical overflow of opinion tends to give an editor a pleasurable sense of his own value. He may come to think that this overflow, like that of the Nile, is needed to give a beneficient renewal to the world's fertility. Without asserting his own infallibility, he often seems to take it for granted.

Comments on the present war furnish excellent illustrations of this. Some newspapers, of which one New York daily is the leader, have exhibited great scorn of what they deem slowness and incompetence in the management of our Cuba campaign. Like children clamoring for the end of the journey as soon as it is begun they demand the conquest of Cuba immediately. Dewey's victory pleased them, and they demand that somebody else do again at once what Dewey did. Like a child crying for the moon they know what they want, but do not know so well the difficulty of getting it. "Fools rush in where angels fear to tread," and they also pass oracular judgment on what they know least about.

More temperate but equally ludicrous comment on the war appears in a leading monthly

review. The editors' conclusion that "the Spaniards thus far have been more than a match for us, not only in diplomacy, but also in their naval strategy," illustrates the fatal facility and the calm assumption of wisdom with which even an editor of ability can expose his unwisdom.

A Similitude.

Possession of a Confederate note, with an alleged intent to pass it as a valid obligation of the United States, was recently made the basis of an indictment under U. S. Rev. Stat. § 5430, on the ground that the note was "engraved or printed after the similitude of any obligation or other security issued under the authority of the United States." United States v. Kuhl, 85 Fed. Rep. 624. Judge Woolson held, however, that such similitude did not appear, and quashed the indictment. If the defendant really intended to pass the note as lawful money, there ought to be some statute to reach the case, but the indictment quashed in this case is little less than absurd. It recalls the attempt—or perhaps it was only the rumor of an intent—some years ago to prosecute a man for making a large board sign in the "similitude" of United States money.

Hypnotism.

Sensational reports have appeared in the newspapers from time to time respecting the defense of hypnotism in criminal cases. These, if believed, will deceive people. Several cases in which, by ignorance or falsehood on the part of news gatherers, hypnotism was made a sensational feature, did not involve the question in any way. Only two cases in the higher courts in this country have decided anything on the subject. One is People v. Ebanks (Cal.) 40 L. R. A. 269, which decides on this matter nothing except that the statements of a person made while hypnotized are not evidence in his own favor. The other is People v. Worthington, 105 Cal. 166, which held that the commission of a homicide by a woman who had been told to do it by her husband does not prove that she was hypnotized, and that, in the absence of proof that she was subject to the influence of hypnotism, testimony as to its effect was not admissible. An extensive note to the above case of People v. Ebanks collects, not only the judicial, but the scientific, utterances on the subject, and shows that, while it has received prolific discussion, it is almost barren of legal adjudications or of established scientific conclusions.

Paying for a Life.

A curious fact in English law is the loss for centuries of the right to claim damages for the death of a kinsman. That right, recreated by modern statutes, seems to have been one of the most fully established of all rights in early English law, when civil and criminal procedure were not clearly distinguished. A schedule of prices to be paid for lives of men, as Prof. Maitland shows in his "Domesday Book and Beyond," was well established. The wergild of a villein or ceorl was 200 Saxon shillings, to to be paid to his kinsfolk as compensation for his life, while a further sum of 30 shillings called a man-bot was to be paid to his lord. But for killing a serf his kinsfolk received a wergild of 40 shillings only, while his lord received a man-bot of 20 shillings. A thegn, on the other hand, was a "twelve hundred man," whose wergild was equal to that of six villeins or ceorls. Here seems to be a clear recognition of a private right of compensation for the loss of a kinsman's life. It is strange that it should have disappeared from English law to reappear again 600 or 700 years later. Prof. Maitland says that "in the 12th century the old system of wer and bot is already vanishing." It is in the present century that the right to compensation for the loss of the life of certain relatives has become generally established by statute, both in England and in the United States. Lord Campbell's act of 1846 is usually mentioned as the pioneer of the statutes on the subject. Yet Tiffany, in his "Death by Wrongful Act," calls attention to a Massachusetts statute of 1648 which provided for a fine of $200, payable to the next of kin of a person killed because of defects in a highway or bridge. A few judges have insisted with much force that the common law gave a right of action for death, but the contrary doctrine seems to be now established. Yet if we say that the common law denies the right, we must mean the common law since the 12th century.

Street-car Transfers—Right to Wait for Seat.

A decision most welcome to tired mortals was announced by Judge Woodward in Jenkins v. Brooklyn Heights R. Co. 29 App. Div. 8, to the effect that a person having a street-railway transfer ticket which is so punched as

to show that it must be used within ten minutes may wait for a car in which he can obtain a seat, although it does not come within the time limited and others cars have passed on which he might have got standing room. This decision, however, is based on the provision of New York Laws 1892, chap. 676, which required the transfer ticket to be given without extra charge. It is held that the benefit of this statute cannot be made to depend on taking the car within ten minutes irrespective of the opportunity to get proper accommodations thereon. By reason of this statute the court distinguishes the case of Heffron v. Detroit City R. Co. (Mich.) 16 L. R. A. 345, in which the carrier's rule that a transfer ticket must be used within fifteen minutes was held valid. The court quotes other authorities to show that standing room in the passageway is not proper accommodation for passengers, and further declared that an arbitrary time limit, applying equally to the feeble and infirm, and which is only sufficient to allow a very narrow choice of cars, cannot be said to be such a reasonable regulation as the company is justified in making under the law. Section 104 of this statute requires transfers to be issued by every corporation entering into a certain contract. Construing this with the preceding section, the contract referred to seems to be one for the use by one company of the route or portion of the route of another. The court discusses the question only with reference to this statute, and does not decide anything as to transfers, if there are any, which do not come under the statute.

No Use for the Truth.

A journal called "The California Voice," published at Los Angeles, California, is roused at a recent article in CASE AND COMMENT, entitled "The Legalized Liquor Traffic." That article pointed out the falsehood of asserting that the Supreme Court of the United States, when it declared that there is "no inherent right" to sell intoxicating liquors, held either expressly or by implication that such sales were unlawful until legalized by statute, and showed that on the contrary it expressly upheld the validity of license regulations as an exercise of the police power to *impose conditions upon* "any *lawful trade* or business." This is a demonstration of the falsehood of quoting that case as authority for the statement that the liquor traffic was unlawful until "legalized." The whole case went on the unquestioned assumption of a common-law right to carry on such business. The only question was whether that right was so absolute or "inherent" as to be protected by the Constitution against any restriction in the exercise of the police power. The court held that the police power could restrict the right. Now "The California Voice" falsely represents that the case entirely denies the existence of any such common-law right. But it does not give its readers any hint of the truth of the matter or of what the case actually decided. Instead of that it stubbornly quotes again that statement that there is "no inherent right to sell intoxicating liquors," and still tries to make its readers believe the falsehood that the court denied the lawfulness of such sales until legalized. After this fraud on its readers it piously concludes as follows: "The liquor traffic lives because of sophistry in high places, false teachings, dead consciences, corruption in politics, and the inconsistency of professed Christians." "The California Voice," in its zeal to combat drunkenness among men, should remember that among the drunkards and other outcasts who are excluded from good company hereafter the Revelator places "whosoever loveth and maketh a lie."

The Truth of the Matter.

Another person sends us from California a clipping which, after stating that the drink bills of the United States for one year, according to the figures of internal revenue commissioner Miller, are $1,226,258,460, quotes from the Supreme Court of the United States this statement: "There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of a state or of a citizen of the United States. As it is a business attended with danger to the community, it may be entirely prohibited." This truthfully states the doctrine of the Supreme Court of the United States and of the other courts of this country. The business "may be entirely prohibited" if an actual working majority of the people agree that a prohibitory law is desirable and practicable.

The prohibition of the liquor traffic is only a further extension of the exercise of the police power, which already restricts it. The sale of anything which may be hurtful to the purchaser is within the reach of that power. Yet the fact that an article which a man voluntarily purchases may be used by him to his own hurt does not make the sale of it unlaw-

ful at common law. The sale of gunpowder, firecrackers, quack medicines, chloral, chloroform, opium, and a multitude of other things, may be injurious or dangerous to the buyer in greater or less degree, but, if he is competent to do business, the sale is lawful unless it has been prohibited by law. This is exactly the case with the sale of intoxicating liquors. Until the state interferes, such sales are within the general rule that men have liberty to buy and sell at their pleasure. Some men discuss this question as if the purchaser of intoxicating liquor was always a slave, compelled to buy and drink at the pleasure of the seller. This is at the bottom of the constant comparison between the tyranny of the slave power and that of the rum power. But with all due allowance for those who have a diseased appetite, the ordinary drinker's freedom of choice is a fact which it is not reasonable or wise to ignore. He is a factor in the traffic as he also is a factor in the making of the laws.

The law of the matter is all summed up in this: A contract for intoxicating liquors is like buying or selling other things which may harm the buyer. It is an exercise of the common-law right of contract, but subject to the police power of the state, which may regulate, restrict, or prohibit it altogether as the people of the state may deem best. It has not been "legalized" because it was never illegal except as modern enactments have made it so. This is established beyond chance of dispute by the whole body of judicial decisions on the subject. But it can be made illegal whenever the people choose to make it so.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 39, Part 6, Book 40, Part 1.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Animals.

A traveler going into the yard of a feed and livery barn which is open to patronage by the public, and at which his team is being kept

for the night, in order to see that his buggy has been put into the barn and to get some articles from it, is held, in Shultz *v.* Griffith (Iowa) 40 L. R. A. 117, to have a right of action against the proprietor for injuries inflicted upon him by a dog.

Attorneys.

The effect of a conviction of felony as a ground for disbarring an attorney is held, in *Re* Kirby (S. D.) 39 L. R A. 856, to continue notwithstanding the pendency of a writ of error and supersedeas.

Bills and Notes.

Sureties on a note made to raise money by discount are held, in Greenville *v.* Ormand (S. C.) 39 L. R. A. 847, to be released by the discount of the note by a person other than the nominal payee, on the payee's mere indorsement of the note without recourse.

A note payable in specified bonds at par is held, in Johnson *v.* Dooley (Ark.) 40 L. R. A. 74, to continue to be payable in such bonds notwithstanding a failure to pay or tender the bonds on the day the note is due, where the note does not give a mere privilege or option to pay in bonds, but makes a positive and absolute promise to pay in that manner.

Carriers.

A conductor beating a passenger who slapped his face with his hand is held, in St. Louis S. W. R. Co. *v.* Jones (Ark.) 39 L. R. A. 784, to render the carrier liable if he uses excessive force, and the carrier has the burden of proving that he used only such force as was necessary to repel the assault.

A carrier agreeing to transport and forward fruit by passenger train service is held, in Colfax Mountain Fruit Co. *v.* Southern Pac. Co. (Cal.) 40 L. R. A. 78, to be liable for such service until the fruit reaches its destination, although it has stipulated that its responsibility as common carrier shall cease at the point where the fruit leaves its road.

Case.

The remedy for failure of a servant or agent to pay over money on demand after collecting it for his principal is held, in Royce, Allen, & Co. *v.* Oakes (R. I.) 39 L. R. A. 845, to be by assumpsit or debt, and not by trespass on the case.

Conflict of Laws.

A note to pay a bet on a horse race run in another state where such notes are presumed valid, and where a note of which this is a renewal was given, is denied enforcement in North Carolina, in the case of Gooch *v.* Faucette, 39 L. R. A. 835, on the ground that its enforcement is contrary to the public policy of the state, even if the note is to be deemed a contract of the other state in which it would be valid.

Contracts.

An agreement by the owners of race horses entered at certain stake races, to divide equally the premiums and stake moneys awarded to any of their horses, is held, in Hankins *v.* Ottinger (Cal.) 40 L. R. A. 76, to be valid, and not a wagering contract.

A partnership for horse racing on a bet with a person whom the partners regard as a "sucker" and a "big snap," into which they induce him to enter by making him think he has a sure thing and by deceiving him into the supposition that their horse is untrained and undeveloped, while they think they have a "dead mortal cinch," is held, in Morrison *v.* Bennett (Mont.) 40 L. R. A. 158, to be such a conspiracy to defraud that the court will not aid either of the partners to obtain an accounting of the profits.

Convicts.

A criminal assault by a convict at large is held, in Henderson *v.* Dade Coal Co. (Ga.) 40 L. R A. 94, to be an unanticipated consequence of his being at large, and therefore one for which his custodian was not liable to pay damages, even if he had been negligent in failing to keep the convict safely confined.

Corporations.

An action against what purports to be a corporation, to recover a tax which it is required to pay as a condition precedent to corporate existence, is held, in Maryland Tube & Iron Works *v.* West End Imp. Co. (Md.) 39 L R. A. 810, insufficient to give it a legal existence for all purposes, or to estop the city from denying its corporate existence.

Courts.

An attempt to give to a superior court or judge thereof the jurisdiction to approve and adopt or modify a plan for locating and constructing a street railway, including the determination of the streets to be occupied and other questions involved, is held, in Norwalk Street R. Co.'s Appeal (Conn.) 39 L. R. A. 794, an attempt to confer power which is not judicial, and which cannot, therefore, be constitutionally imposed on the judges or court.

Criminal Law.

The ancient right of a person accused of crime under indictment or information, to appear in court unfettered, is held, in State *v.* Williams (Wash.) 39 L. R. A. 821, to be preserved by legislative adoption of the common law, and the constitutional right to appear and defend in person is held to include the right to appear unfettered, unless restraint is necessary to secure the safety of others and the custody of the prisoner.

An indeterminate sentence for a convict, not more than the maximum nor less than the minimum prescribed by statute for the specified crime, is held, in Miller *v.* State (Ind.) 40 L. R. A. 109, to be constitutional.

Easements.

The right of passage through a barway as part of a right of way by prescription is held, in Nichols *v.* Peck (Conn.) 40 L. R. A. 81, to be preserved notwithstanding a failure to use it for eleven years after the barway has been made impassable by lowering the highway with which it connected, and the use of a substitute barway about 70 feet distant under an implied license.

A way of necessity is held, in Ritchey *v.* Welsh (Ind.) 40 L. R. A. 105, to be created on the partition of lands, in the absence of anything in the record to the contrary, if it would have been created on conveyance or devise of one of the parcels by the common ancestor.

Embezzlement.

A receiver is held, in State *v.* Hubbard (Kan.) 39 L. R. A. 860, not to be an agent within the meaning of a statute as to embezzlement by agents.

The right of an abutting owner to compensation for damage caused by the poles and wires of an electric railway in the street is sustained in Jaynes *v.* Omaha Street R. Co. (Neb.) 39 L. R. A. 751, and it is said that it is not necessary for this purpose that the road should be an additional burden upon the easement, as matter of law, under a constitutional provision for compensation in case of property damaged for public use.

Eminent Domain.

The occupation and assumption of exclusive possession of submerged lands under a navigable stream owned by, or leased by the state to, a citizen, by the United States government in changing the channel of the stream for the purpose of improving its navigation, is, according to Brown *v.* United States, 81 Fed. Rep. 55, a taking of private property for which compensation must be made.

Evidence.

Insanity set up as a defense on a trial for murder is held, in Kelch *v.* State (Ohio) 39 L. R. A. 737, to require it to be established by a mere preponderance of the evidence.

The rule that the mere happening of an accident is not sufficient to show negligence as between persons having no contract relations with each other is applied in Stearns *v.* Ontario Spinning Co. (Pa.) 39 L. R. A. 842, to the case of an injury by the falling of the head of an ax from the door in the fifth story of a building, when the ax flew from the handle while being used by a competent person, after due care in the inspection of the instrument.

The failure of a defendant to examine as a witness an employee who was present at the transaction in question is held, in Western & A. R. Co. *v.* Morrison (Ga.) 40 L. R. A. 84, sufficient to give rise to an inference that his testimony, if given, would have been prejudicial to his employer, and the tender of the witness to the other party is held insufficient to change the presumption.

Executors and Administrators.

The right of an administrator *de bonis non* to maintain an action against the estate of his predecessor for money of the estate wrongfully received by a predecessor, and not accounted for, is denied in Hodge *v.* Hodge (Me.) 40 L. R. A. 33, if such money is not distinguishable as part of the intestate's property.

Incompetent Persons.

A judgment against an insane person, and the sale of real estate in satisfaction thereof, are held, in Spurlock v. Noe (Ky.) 39 L. R. A. 775, not subject to be set aside long after on the ground of his insanity, if he was going at large and attending to his own affairs, without objection, up to the time of the sale, and no steps have been taken to set aside the judgment when his committee is appointed two years after.

Injunction.

An injunction against the plaintiff is held, in Sternberg v. Wolff (N. J.) 39 L. R. A. 762, to be properly imposed as a condition of a similar injunction in his favor to limit the power of the defendant to make promissory notes or checks for a corporation in which they have equal interests.

An injunction against the proprietor of a theater to prevent breach of a contract to furnish the theater and equipment to the manager of a company for a certain time, and to prevent him from furnishing the theater to a rival company during that period, is denied in Welty v. Jacobs (Ill.) 40 L. R. A. 98, as the contract is not one that can be specifically enforced.

Innkeepers.

Persons attending a club banquet at a hotel on the invitation and at the expense of the club, which had a contract to pay a specified sum for each plate furnished, were held, in Amey v. Winchester (N. H.) 39 L. R. A. 760, to have no right of action against the proprietor for the loss of their hats left by them on a rack at the entrance of the dining room, although they had been registered and assigned a room at the hotel.

Insurance.

The fact that fireworks were on exhibition in a store when a policy of insurance was issued on the stock, or that one of the firm of agents which issued the policy soon after purchased fireworks at the store, is held, in Phœnix Ins. Co. v. Flemming (Ark.) 39 L. R. A. 789, to be insufficient to show knowledge of the agent when issuing the policy that the fireworks were kept in stock.

A building that has lost its identity and specific character as a building, and become so far disintegrated that it cannot be properly designated as a building, although some parts of it may remain standing and the lower floors can be safely used for rebuilding, is held, in O'Keefe v. Liverpool & L. & G. Ins. Co. (Mo.) 39 L. R. A. 819, to be a total loss within the meaning of a statute requiring full payment.

Whether an accident or a disease caused the death of a party whose life is insured is held, in Modern Woodmen Acc. Asso. v. Shryock (Neb.) 39 L. R. A. 826, to be a question for the jury unless the proofs are so convincing that all reasonable men, in the fair exercise of judgment, would be brought to the same conclusion.

Landlord and Tenant.

A man who hires lodging rooms in a dwelling house, and then brings dissolute and immoral persons to those rooms, and applies them to the purposes of assignation or to create a nuisance therein, is held, in Sullivan v. Waterman (R. I.) 39 L. R. A. 773, to be liable to the owner of the building for injury to the good name of the house and for damage to his custom and business.

Master and Servant.

Negligence of a foreman in a quarry in failing to give timely warning of a blast, whereby one of the workmen is injured, is held, in Belleville Stone Co. v. Mooney (N. J.) 39 L. R. A. 834, to be in respect to the duty of the employer and imputable to him, and not one of the obvious dangers of which the risk was assumed by the employee.

A release by an employee of an express company of all liability for injuries sustained by negligence of the employer "or otherwise" is held, in Pittsburg, C. C. & St. L. R. Co. v. Mahoney (Ind.) 40 L. R. A. 101, to include the liability of the express company to a railroad company to hold the latter harmless against claims of the expressmen for injuries, and precludes an action against the railroad company for causing the death of the employee.

Mines.

The drilling of oil wells by each owner of adjoining lands near the division line, so that each may obtain the amount of oil contained in his land, is held, in Elley v. Ohio Oil Co. (Ohio) 39 L. R. A. 765, to be lawful and to afford each of them sufficient protection against the other.

Mortgage.

The exemption of two cows from a chattel mortgage given by a householder is held, in Harley v. Procunier (Mich.) 40 L. R. A. 150, to be satisfied if the cows are selected by him, athough his wife may wish to select other cows instead.

The application of the proceeds of a sale under a deed of trust to the first of two notes secured is held, in Owings v. McKenzie (Mo.) 40 L. R. A. 154, to be valid as against objections by mesne conveyancers who by purchase and sale of the property have become sureties, although their liability has been released by extension of time.

Municipal Corporations.

A lease of city gas works is held lawful in Baily v. Philadelphia (Pa.) 39 L. R. A. 837, against a variety of objections, and it is held not to constitute a delegation of any municipal power.

A debt for the purchase of an electric-light plant for a municipal corporation is held, in Mayo v. Washington (N. C.) 40 L. R. A. 163, not to be one of the "necessary expenses" of the town which can be incurred without a vote of the majority of the qualified voters and legislative authority.

The intoxication of a passenger standing on the running board of a street car is held, in Kingston v. Fort Wayne & E. R. Co. (Mich.) 40 L. R. A. 131, not to absolve the company from exercising care toward him, or to prevent his recovering damages if injured by the carrier's negligence.

Parent and Child.

The children and heirs of a life tenant, to whom a remainder is given by statute under a deed to a person and his "bodily heirs" are held, in Clarkson v. Hatton (Mo.) 39 L. R. A. 748, not to include an adopted child of the life tenant, where at the enactment of the statute there was no law authorizing the adoption of children. The life tenant cannot destroy the vested right of the statutory heirs by an adoption.

Sale.

The retaking by a vendor, as owner, of property sold by conditional sale with a reservation of title, and his giving a credit to the vendee for a part of the price of the property, retaining the instalments of purchase price paid, as the contract allowed, for the use of the property, is held, in Perkins v. Grobben (Mich.) 39 L. R. A. 815, to preclude an action for the balance of the purchase price on a note therefor which provides that the property may be retaken, and also that a suit on the note shall not waive title to the property.

Schools.

The right of women to vote at a school meeting for a director of a district is held, in Harris v. Burr (Or.) 39 L. R. A. 768, to be allowed by a constitutional provision limiting to male citizens the right to vote "at all elections authorized by law," where another provision gives the legislature power to provide a system of common schools.

Street Railways.

The killing of a deaf and dumb boy by an electric car which had defective brakes preventing the motorman from stopping it with proper readiness is held, in Thompson v. Salt Lake Rapid Transit Co. (Utah) 40 L. R. A. 172, to make the street-car company liable for damages even if the boy was negligent.

Sunday.

The Pennsylvania Court of Common Pleas holds in Fleischman v. Rosenblatt, 20 Pa. Co. Ct. 512, that a promise of marriage is not within the Pennsylvania statute forbidding the performance of any worldly employment or business whatsoever on Sunday, works of necessity and charity excepted.

Taxes.

The exemption of educational institutions from taxation is held, in Kentucky Female Orphan School v. Louisville (Ky.) 40 L. R. A. 119, to include a school for the free education of female orphan children, although it is under the control of a particular religious denomination, and receives day pupils, who pay tuition if able to do so.

Trespass.

One who enters upon his own land, and tears down a fence which has been built to inclose it by a person who wrongfully took possession of it is held, in Stilwell v. Duncan (Ky.) 39 L.

R. A. 863, to be not liable to an action for trespass, but in such action entitled to make the counterclaim for damages to the freehold.

Trusts.

A trust to place one's property beyond the reach of creditors, while retaining full enjoyment of the income and revenues thereof through the instrumentality of a trustee, is held, in Brown *v.* McGill (Md.) 39 L. R. A. 806, one which cannot lawfully be created even by a married woman or a woman in contemplation of marriage.

Unborn Children.

Persons yet unascertained and unborn are held, in Loring *v.* Hildreth (Mass.) 40 L. R. A. 127, to be sufficiently represented by a guardian *ad litem* in a bill to remove a cloud upon title, and such a proceeding is held not to deprive them of their rights without due process of law.

Unfair Competition.

In England it is held in Ajello *v.* Worsley [1898] 1 Ch. 274, that an advertisement by a dealer in pianos, of a new piano of a certain manufacture at a wholesale price, in consequence of which other dealers were caused to give up dealing with such manufacturer, gives rise to no cause of action, although continued after such dealer ceases to have in stock any piano of such manufacture.

Waters.

The removal of a water meter by a commissioner is held, in Ladd *v.* Boston (Mass.) 40 L. R. A. 171, to be within his discretion, notwithstanding the consumer has so arranged his fixtures while having the meter that its removal will require him to pay more than twenty times as much as other water takers pay for the same quantity of water, when it does not appear that the rates charged for fixtures are unreasonable or unjustly discriminating.

New Books.

"The Church and the Law." By Humphrey J. Desmond. (Callaghan & Co., Chicago, Ill. 1 Vol. $1.

"The Elements of the Law of Public Corporations." By Charles B. Elliott. (Callaghan & Co.) 1 Vol. $4.

"Tennessee Cases." Edited and Annotated by Robert T. Shannon. (Marshall & Bruce Co., Nashville, Tenn.) 1 Vol. $5.

"Tax Laws of New York." Edited by Cumming & Gilbert. (Baker, Voorhis & Co., New York.) 1 Vol. $5.

"The War Revenue Law of 1898." Annotated by Heydecker & McMahon. (Matthew Bender, Albany, N. Y.) 1 Vol. $2. Cloth with law sheep back, $1.50.

"The Domestic Relations Law of New York." Annotated By Frank B. Gilbert. (Matthew Bender) 1 Vol. $2.50.

"War Revenue Law, with Index." Washington Law Book Co. (Washington, D. C.) Paper, $.25.

"United States Bankrupt Law, 1898. (Washington Law Book Co.) Paper, $.50.

"The Bankrupt Law." Compiled, with Index, by Nathan Frank. (F. H. Thomas Law Book Co., St. Louis, Mo.) Cloth, $1.50.

"Black on Bankruptcy." Annotated Edition of New Bankrupt Law. (West Publishing Co., St. Paul, Minn.) Cloth, $2. Sheep, $2.50.

"Bump on Bankruptcy." (In Press.) 11th Edition, 1898. (W. H. Lowdermilk & Co., Washington, D. C.)

Recent Articles in Law Journals and Reviews.

"Levasseur's American Workingman."—13 Political Science Quarterly, 321.

"The German Exchange Act."—13 Political Science Quarterly, 286.

"Official Tariff Comparisons."—13 Political Science Quarterly, 273.

"The Local Government Board."—13 Political Science Quarterly, 232.

"The Continental System."—13 Political Science Quarterly, 213.

"Evidence Illegally Obtained."—7 Michigan Law Journal, 150.

"Mandatory Injunctions."—1 Wisconsin Bench and Bar, 147.

"Effect of Insolvency upon the Statute of Limitations."—46 Central Law Journal, 493.

"Contraband of War."—104 Law Times, 569.

"The Merger of Trespass in Felony."—104 Law Times, 498.

"Liability of Tenants for Life in Respect of Repairs on Leasehold Property."—104 Law Times, 450.

"Some Notes on Divorce."—10 Green Bag, 239.

"Preparation of a Legal Brief."—6 American Lawyer, 219.

"The Draft System and Attachments in California." 6 American Lawyer, 217.

"The Appointing Power; Its Location and Limits."—6 American Lawyer, 212.

"Philosophy of the Law."—6 American Lawyer, 210.

"Primitive Legal Conceptions in Relation to Modern Law."—6 American Lawyer, 205.

"Reading from Medical Works."—46 Central Law Journal, 515.

"The Effect of State Legislation upon the Liability of the Husband for the Torts of the Wife."—46 Central Law Journal, 511.

"Trademarks under the English Law."—33 The Law Journal, 313.

"The English Law of Trade, or Firm, Name."—33 The Law Journal, 311.

The Humorous Side.

DOG DAYS IN COURT.—A pretty costly dog in Michigan was found to have devoured $10 worth of meat at one sitting. Cheney *v.* Russell, 44 Mich. 620.

If a dog greedily and rudely goes behind the counter in a shop, and there feloniously applies to his own use bread and cheese left for mice and rats, and dies from the effects of poison spread upon the comestibles, his death does not lie at the shop keeper's door, though he die there. Appleton, Ch. J., in State *v.* Harriman, 75 Me. 562, 46 Am. Rep. 423, citing Stansfeld *v.* Bolieng, 22 L. T. Rep. N. S. 799, Ex.

On the prosecution of a negro for stealing a dog with a collar on, when a demurrer to the indictment was sustained because it was not larceny to steal a dog, the prosecution claimed that he also stole the collar that was on the dog, but the defense claimed that the negro took the dog only and the dog took the collar. The prisoner was finally discharged. 3 Cent. L. J. 554.

A license to keep a yellow and white dog named Dime does not give authority to keep a black and white Newfoundland dog named Nigg. Com. *v.* Barhany, 123 Mass. 245.

In Massachusetts there was an independent Mugwump dog that wouldn't wear any man's collar. His head was so small and tapered so much from the neck that no collar would stay on. Morewood *v.* Wakefield, 133 Mass. 240.

The habits of dogs are judicially known, and one court declares that "it is not an unfrequent occurrence for a dog to visit as well as anybody else." Burnham *v.* Strother, 66 Mich. 519.

Where a small dog was away from home *décolleté*, although the statute required a collar, and was killed by a large dog, and the defense was that the killing was lawful because of the want of a collar, it was held by the court that the big dog was not *de jure* or *de facto* a police officer or constable, and was not shown to have examined the records to see whether or not the little dog had been licensed to travel without a collar. Heisrodt *v.* Hackett (Mich.) 3 Cent. L. J. 479.

In an action for killing a dog the defendant can say: "He was a wolf in the clothing of a dog, a *caput lupinum*, . . . and if the plaintiff had placed his affections on him it was not on a noble animal, but on the vilest cur that ever cut the throat of a sheep or sucked his blood." Lentz *v.* Stroh, 6 Serg. & R. 34.

A doggone cur is disrespectfully spoken of in a Georgia case as "a worthless, bobtailed, bench-legged fice." Patton *v.* State, 93 Ga. 111, 24 L. R. A. 732.

In a Texas case it was said (truthfully or otherwise) that a certain Newfoundland dog was trained to signal the arrival of any person, and that his master could tell from his bark whether the person approaching was man, woman, or child. Heiligmann *v.* Rose, 81 Tex. 222.

The canine *cause célèbre* is Wiley *v.* State, 22 Barb. 506, which was a suit to recover for the killing of one dog by another. The judge showed much dog learning although he confessed his limitations. He said: "I am constrained to admit total ignorance of the code duello among dogs, or what constitutes just cause of offense to justify their resort to the *ultima ratio regem*, a resort to arms, or rather, to teeth, for redress; whether jealousy is a just cause of war, or what different degrees and kinds of insults or slight, or what violation of the rules of etiquette, entitle the injured or offended beast to insist upon prompt and appropriate satisfaction." The court also suggested the trouble that would arise in such a suit if the plea were self-defense, averring that "he did necessarily a little bite, scratch, wound, tear, devour and kill the plaintiff's dog, doing no unnecessary damage to the body or hide of the said dog." The court in this case also held that "the courtesies and hospitality of dog life cannot well be regulated by the judicial tribunals." Students in this department should carefully read this whole case.